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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

**DONALD G. NORRIS,**

**Plaintiff,**

**vs.**

**TURBO DATA SYSTEMS, INC., and  
DOES 1-10, Inclusive,**

**Defendants.**

**CASE NO. SACV11-01040AG (RNBx)**

**Honorable Andrew J. Guilford**

**DEFENDANT TURBO DATA  
SYSTEMS, INC.'S MOTION FOR  
SUMMARY JUDGMENT  
PURSUANT TO FEDERAL RULE  
OF CIVIL PROCEDURE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

[Filed concurrently with Separate  
Statement of Uncontroverted Facts and  
Conclusions of Law; Compendium of  
Exhibits; Declarations of Patrik  
Johansson, Elena Chavez and Roberta  
Rosen; and [Proposed] Order]

**DATE: May 28, 2012**

**TIME: 10:00 a.m.**

**CRTRM: 10-D**

**Trial Date: None Set**

1 TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 28, 2012, at 10:00 a.m. in Courtroom  
3 10-D of the United States District Court located at 411 West Fourth Street, Santa  
4 Ana, California, the Honorable Andrew J. Guilford presiding, Turbo Data Systems,  
5 Inc. ("Defendant"), will and hereby does, move for Summary Judgment pursuant to  
6 Federal Rule of Civil Procedure 56 as to Plaintiff's entire Second Amended  
7 Complaint ("SAC").

8 Defendant hereby requests that the Court grant its Motion for Summary  
9 Judgment on the following grounds:

10 1. The FDCPA does not apply because the subject debt is not a "consumer  
11 debt" under the FDCPA.

12 2. Defendant did not violate the FDCPA because Defendant never  
13 received any dispute from Plaintiff.

14 4. Any Alleged Violation by Defendant was not intentional and was  
15 caused by a Bona fide error.

16 2. Plaintiff's Claims are barred by the statute of limitations.

17 Defendant's Motion for Summary Judgment is based on this Notice, the  
18 accompanying Memorandum of Points and Authorities, The Separate Statement of  
19 Undisputed Material Fact, the Declarations of Roberta Rosen and Elena Chavez, any  
20 matter of which the Court takes judicial notice, the pleadings in this action, such  
21 further evidence and argument as may be presented at or before the hearing on this  
22 matter.

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**CERTIFICATE OF COMPLIANCE**

This motion is made following the conference of counsel pursuant to L.R. 7-

3.

DATED: April , 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:           /s/ Patrik Johansson          

Patrik Johansson

Attorneys for Defendant, TURBO DATA  
SYSTEMS, INC.

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1 **I. INTRODUCTION**

2 Plaintiff's Second Amended Complaint ("SAC") contains a single cause of  
 3 action for violation of the Fair Debt Collection Practices Act ("FDCPA").  
 4 Plaintiff's SAC alleges that Defendant is a debt collector attempting to collect on  
 5 two parking citations involving Plaintiff's vehicle. Plaintiff allegedly sent  
 6 Defendant a June 10, 2009, dispute letter which Defendant never responded to.  
 7 Plaintiff further alleges that Defendant, by reporting the debt after Plaintiff sent the  
 8 dispute letter, violated the FDCPA.

9 The entire SAC must fail as a matter of law because the specific debt  
 10 allegedly owed by Plaintiff is not a "consumer debt" pursuant to the FDCPA. In  
 11 addition, even if the debt was a consumer debt, Plaintiff's claim fails because  
 12 Defendant did not receive any dispute from Plaintiff. Furthermore, even if  
 13 Defendant did violate the FDCPA, which Defendant denies, any alleged violations  
 14 were not intentional and were caused by a bona fide error. Finally, Plaintiff's entire  
 15 FDCPA claim is barred by the FDCPA's one year statute of limitations.

16 **II. STATEMENT OF FACTS**

17 **A. Plaintiff's Vehicle Receives Two Citations Authorized By**  
 18 **California Vehicle Code Section 21113**

19 On February 11, 2006, Plaintiff Donald G. Norris' vehicle received a citation  
 20 at the R1E RC02 Parking Lot at UCLA, Citation Number 08050042.  
 21 (Uncontroverted Facts and Conclusions of Law #1 ("UFCL")). On February 12,  
 22 2006, Plaintiff's vehicle received a second citation at the same parking lot, Citation  
 23 Number 03251810. (UFCL #2.) Both citations were because of failure to display a  
 24 valid permit and were issued pursuant to *California Vehicle Code section 21113*.  
 25 (UFCL #3.) As of April 2012, neither of the two citations has been paid. (UFCL  
 26 #4.)

27 The parking lot where Plaintiff's vehicle received the citations has at all  
 28 relevant times had a sign which informs everyone that violators are subject to

1 citation pursuant to *section* 21113. (UFCL #5.) UCLA parking tickets are issued in  
 2 accordance with the California Vehicle Code and as well as UCLA Parking  
 3 Regulations. UCLA is authorized through *California Vehicle Code Section*  
 4 21113(a) to establish parking regulations. (UFCL #6.) All citations are enforced by  
 5 UCLA Parking Enforcement. (UFCL #7.) Violation of the *California Vehicle Code*  
 6 will result in a fine issued by UCLA Parking Enforcement. (UFCL #8.) Both of  
 7 Plaintiff's tickets were issued because of the failure to display a permit, which is a  
 8 violation of CVC 21113A6 and resulted in the imposition of a fine by UCLA.  
 9 (UFCL #9.) Citations issued by UCLA cannot be waived unless the violator  
 10 establishes that the fine was issued in error. (UFCL #10.)

11 All violators, including Plaintiff, have 21 days to contest the citation as  
 12 provided by *California Vehicle Code Section* 40215. The violator has three levels  
 13 by which to appeal a ticket, (1) Level 1: Administrative Review; (2) Administrative  
 14 Hearing; and (3) Civil Review. (UFCL #11.) UCLA, pursuant to *California*  
 15 *Vehicle Code Section* 40230(a), allows for the ability to file a Civil Appeal at the  
 16 municipal court if the violator is not successful pursuant to Level 1 and Level 2.  
 17 (UFCL #12.) The citations issued to Plaintiff were never appealed. (UFCL #13.)

18 B. **Defendant Has No Involvement With The Amount Of The Fine Or**  
 19 **The Parking Signs**

20 In the present matter the citations were not assigned to Defendant for  
 21 collection on the delinquent account until May 11, 2009. (UFCL #14.) Defendant  
 22 has never provided UCLA with any parking signs. (UFCL #15.) UCLA is  
 23 responsible for all parking signs at UCLA parking lots. (UFCL #16.) Defendant has  
 24 never had any involvement in setting the amount of the citation. (UFCL #17.)

25 **Defendant Never Received Plaintiff's Alleged Dispute Letter**

26 Defendant never received the dispute letter Plaintiff allegedly sent on June 10,  
 27 2009. (UFCL #18.) If Defendant would have received the dispute letter, Defendant  
 28 would have validated the debt and mailed a response back to Plaintiff. (UFCL #19.)

1           C.     **Defendant Has Procedures In Place To Make Certain That Dispute**  
 2                   **Letters Are Properly Dealt With**

3           Defendant has a courier service provided by Specialized Messenger Service  
 4 who goes to the post office every day to pick up mail from the post office box  
 5 allegedly used by Plaintiff to send the dispute letter. (UFCL #20.) Defendant has  
 6 two persons each day assigned to sort through all the mail received for a particular  
 7 day. (UFCL #21.) Each person responsible for sorting the mail has been personally  
 8 trained by a supervisor. (UFCL #22.) The training involves new employees  
 9 actually going side by side with a supervisor until the supervisor is comfortable that  
 10 the person is capable of performing the task. (UFCL #23.) In addition, each person  
 11 is informed by the supervisor to ask the supervisor any questions they may have as  
 12 to the mail. (UFCL #24.) In the present matter, since Plaintiff's alleged letter is  
 13 clearly a dispute letter, had Defendant received the letter it would have gone to the  
 14 correspondence pile. (UFCL #25.) In addition, if a correspondence letter is  
 15 accidentally put in the payment pile, the letter is put back into the correspondence  
 16 pile when the employee processing payments discovers that there is no check.  
 17 (UFCL #26.)

18           All dispute letters are then separated from the correspondence and put into a  
 19 separate pile. Employees, who have been trained side by side with a supervisor,  
 20 either draft a response letter or enter a summary of the dispute letter online. (UFCL  
 21 #27.) Unless UCLA informs Defendant not to pursue the debt, Defendant has a  
 22 policy of sending a response letter each time it gets a dispute letter from a debtor.  
 23 (UFCL #28.) If Defendant does not send a response, a summary of the dispute  
 24 letter's content is put in Defendant's collection notes. (UFCL #29.) If Defendant  
 25 would have received Plaintiff's letter, Defendant's collection notes would indicate  
 26 that either a response was sent back to Plaintiff or, if a response was not sent, a  
 27 summary of the content of the letter. (UFCL #30.) Since Defendant's collection  
 28 notes have no information regarding Plaintiff's letter, Defendant did not receive the

1 letter. (UFCL #31.) Furthermore, all employees are informed by their supervisor  
 2 not to discard any correspondence related to the debt or dispute letters. All  
 3 correspondence and dispute letters are stored for two years and then destroyed.  
 4 (UFCL #32.) If mail that is sent to Defendant was not being received, or if it was  
 5 being received and not handled properly, Defendant would expect to get complaints  
 6 on the consumer phone numbers (listed on the mailed letters) or complaints from  
 7 their customers, in this case UCLA, whom citizens could contact directly, neither of  
 8 which was happening in 2009 or happening now. (UFCL #33.)

9 **D. Defendant's Procedures Have Worked Very Well**

10 Since 1985, when Defendant opened its doors, it has never been sued for a  
 11 violation of the FDCPA. (UFCL #34.) In addition, Defendant has never previously  
 12 had a situation where a debtor claims that he/she sent a dispute letter which  
 13 Defendant has no record of receiving. (UFCL #35.) In addition, Plaintiff never  
 14 contacted Defendant regarding the dispute letter until the present suit was filed.  
 15 (UFCL #36.)

16 **E. Plaintiff Knew or Should Have Known About Alleged Violations**  
 17 **More Than One Year Prior To Filing Suit**

18 Defendant sent Plaintiff two letters on June 3, 2009, concerning the two  
 19 parking citations. Plaintiff received Defendant's letter prior to June 10, 2009.  
 20 (UFCL #37.) Defendant's June 3, 2009 letters "put Plaintiff on notice that failure to  
 21 resolve the obligation would result in almost immediate referral to at least one credit  
 22 rating agency." (UFCL #38.) In addition, Plaintiff's First Amended Complaint  
 23 "makes clear that Plaintiff knew of Defendant's alleged FDCPA violations in June  
 24 2009." (UFCL #39.) Defendant's June 3, 2009 letter put Plaintiff on notice that  
 25 failure to resolve the obligation would result in almost immediate referral to at least  
 26 one credit rating agency. (UFCL #40.) Plaintiff did not file the present suit until  
 27 July of 2011. (UFCL #41.)

1 **III. STANDARD FOR MOTION FOR SUMMARY JUDGMENT**

2 A motion for summary judgment shall be granted if all the papers submitted  
 3 show that there is no triable issue as to any material fact and that the moving party is  
 4 entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(d). In order to be  
 5 granted summary judgment, a defendant must show that one of the required  
 6 elements of the plaintiff's case cannot be established, or that there is an affirmative  
 7 defense to that cause of action. *Truong v. Nguyen* (2007) 156 Cal.App.4<sup>th</sup> 865, 874.  
 8 Once the defendant has made this showing, the burden shifts to the plaintiff to show  
 9 that a genuine issue of material fact exists as to that cause of action, element, or  
 10 defense. *Id.* There is a genuine issue of material fact if, and only if, the evidence  
 11 would allow a reasonable trier of fact to find the underlying fact in favor of the party  
 12 opposing the motion. *Id.*

13 **IV. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT AS TO**  
 14 **PLAINTIFF'S CAUSE OF ACTION FOR VIOLATION OF THE**  
 15 **FDCPA**

16 **A. The FDCPA Is Only Applicable If The Dispute Involves a Debt**  
 17 **Within The Meaning Of The Statute**

18 "Because not all obligations to pay are considered debts under the FDCPA, a  
 19 threshold issue in a suit brought under the Act is whether or not the dispute involves  
 20 a "debt" within the meaning of the statute. *Turner, et al. v. Cook, et al.*, 362 F.3d  
 21 1219, 1227 (9th Cir. 2003) (Citing *Slenk v. Transworld Sys., Inc.*, 236 F.3d 1072,  
 22 1075 (9th Cir. 2001.)) The FDCPA defines a "debt" as "any obligation or alleged  
 23 obligation of a consumer to pay money arising out of a transaction in which the  
 24 money, property, insurance, or services which are the subject of the transaction are  
 25 primarily for personal, family, or household purposes, whether or not such  
 26 obligation has been reduced to a judgment." 15 U.S.C. § 1692a(5).

27 The FDCPA does not define the term "transaction." However, "transaction"  
 28 involves a "consensual or contractual arrangement, not damage obligations thrust

1 upon one as a result of no more than her own negligence." *Turner, et al. v. Cook, et*  
 2 *al.*, 362 F.3d 1219, 1227-1228 (9th Cir. 2003) (Citing *Hawthorne v. Mac*  
 3 *Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998)); *Fleming v Pickard, et al.*, 581  
 4 F.3d 922 (9th Cir. 2009) (A consensual transaction must be the basis for a  
 5 transaction covered by the 15 U.S.C. Section 1692a(5)). As this Court has  
 6 previously held: "the FDCPA limits its reach to those obligations to pay arising from  
 7 consensual transactions, where parties negotiate or contract for consumer-related  
 8 goods or services." *Waters v. Howard Sommers Towing, Inc.*, 2011 U.S. Dist.  
 9 LEXIS 41346 at \*20 (C.D. Cal. April 11, 2011) (citing *Yazo v. Law Enforcement*  
 10 *Sys.*, 2008 U.S. Dist. LEXIS 93345 at \*5 (C.D. Cal. Nov. 7, 2008); *See also Turner*,  
 11 362 F. 3d at 1227).

12 **B. Parking Tickets Are Generally Not Debts Under The FDCPA**

13 Admittedly, this Court has previously found, in ruling on Defendant's Motion  
 14 for Judgment on the Pleadings, that some parking tickets are debts within the  
 15 FDCPA. However, court's have generally held that most parking tickets are not  
 16 debts within the FDCPA.

17 The Seventh Circuit Court of Appeals in *Gulley v. Markooff & Krasny* 664  
 18 F.3d 1073, 1075 (7<sup>th</sup> Cir. 2011), in holding that municipal fines were not debts under  
 19 the FDCPA stated:

20 "Apparently the question whether fines are "debts" under  
 21 the FDCPA has never arisen in a court of appeals (at least  
 22 not in a precedential decision). Yet that issue has come up  
 23 frequently in the district courts, which have concluded  
 24 uniformly that a fine does not stem from a consensual  
 25 transaction and thus is not a debt under the FDCPA. *See*  
 26 *Reid v. Am. Traffic Solutions, Inc.*, Nos. 10-cv-204-JPG-  
 27 *DGW & 10-cv-269-JPG*, 2010 U.S. Dist. LEXIS 134518,  
 28 2010 WL 5289108, at \*4-5 (S.D. Ill. Dec. 20, 2010)  
 (concluding that fines for traffic violations are not debts  
 under FDCPA); *Mills v. City of Springfield, Mo.*, No.  
 2:10-CV-04036-NKL, 2010 U.S. Dist. LEXIS 92031,  
 2010 WL 3526208, at \*15-16 (W.D. Mo. Sept. 3, 2010)  
 (same); *Durso v. Summer Brook Preserve Homeowners*  
*Ass'n*, 641 F. Supp. 2d 1256, 1264-65 (M.D. Fla. 2008)  
 (concluding that fines assessed against homeowner by  
 homeowners association did not create debts under

1 FDCPA); *Shannon v. ACS State & Local Solutions, Inc.*,  
 2 No. 08-594(DSD/SRN), 2008 U.S. Dist. LEXIS 43368,  
 3 2008 WL 2277814, at \*1 (D. Minn. May 30, 2008)  
 4 (holding that fines levied by county for parking violation  
 5 and failure to register vehicle did not meet criteria for  
 6 FDCPA debts); *Williams v. Redflex Traffic Sys., Inc.*, No.  
 7 3:06-cv-400, 2008 U.S. Dist. LEXIS 22723, 2008 WL  
 8 782540, at \*5 (E.D. Tenn. Mar. 20, 2008) (holding that  
 9 unpaid traffic fine is not debt under FDCPA), *aff'd on*  
 10 *other grounds*, 582 F.3d 617 (6th Cir. 2009); *Yon v.*  
 11 *Alliance One Receivables Mgmt., Inc.*, No. 07-61362-Civ.,  
 12 2007 U.S. Dist. LEXIS 89492, 2007 WL 4287628, at \*1  
 13 (S.D. Fla. Dec. 5, 2007) (same); *Harper v. Collection*  
 14 *Bureau of Walla Walla, Inc.*, No. C06-1605-JCC, 2007  
 15 U.S. Dist. LEXIS 88993, 2007 WL 4287293, at \*7 (W.D.  
 16 Wash. Dec. 4, 2007) (same); *Graham v. ACS State &*  
 17 *Local Solutions, Inc.*, No. 0:06-cv-2708-JNE/JJG, 2006  
 18 U.S. Dist. LEXIS 73973, 2006 WL 2911780, at \*2 (D.  
 19 Minn. Oct. 10, 2006) (concluding that unpaid parking  
 20 tickets do not qualify as debts under FDCPA); *Riebe v.*  
 21 *Juergensmeyer & Assocs.*, 979 F. Supp. 1218, 1221-22  
 22 (N.D. Ill. 1997) (concluding that unpaid fine imposed for  
 23 overdue library book is not debt under FDCPA). We agree  
 24 with these decisions and, as did the district court, conclude  
 25 that the municipal fines levied against Gulley cannot  
 26 reasonably be understood as "debts" arising from  
 27 consensual consumer transactions for goods and services."

15 In *Yazo v. Law Enforcement Sys.*, 2008 U.S. Dist. LEXIS 93345 (C.D. Cal.  
 16 Nov. 7, 2008), a case which, just like the present matter, involved fines imposed as a  
 17 result of a statutory violation, the Court held: "Because these are fines imposed as a  
 18 result of a statutory violation, they were not incurred through a consensual  
 19 transaction and fall outside the scope of the FDCPA's definition of debt."

20 Since a parking ticket/citation is not a consensual arrangement, a parking  
 21 ticket/citation is not a "debt" within the meaning of the FDCPA. *Waters v. Howard*  
 22 *Sommers Towing, Inc.*, 2011 U.S. Dist. LEXIS 41346 at \*21; *Graham v. ACS State*  
 23 *& Local Solutions, Inc.*, 2006 U.S. Dist. LEXIS 73973 (D. Minn. Oct. 10, 2006).  
 24 The Court in *Waters*, in dismissing Plaintiff's case stated: "Plaintiff's argument that  
 25 he consented to the obligation to pay parking tickets is unavailing because the  
 26 issuance of a parking ticket itself was not a consensual arrangement." *Waters v.*  
 27 *Howard Sommers Towing, Inc.*, 2011 U.S. Dist. LEXIS 41346 at \*20.

1                   1.     **The Parking Citation In The Present Matter Is Not Debt**  
 2                             **Within the FDCPA**

3             Here, the undisputed evidence establishes that the ticket Defendant attempted  
 4 to collect from Plaintiff was a fine imposed due to a statutory violation and did not  
 5 arise out of a consensual transaction; On February 11, 2006, Plaintiff Donald G.  
 6 Norris' vehicle received a citation at the R1E RC02 Parking Lot at UCLA, Citation  
 7 Number 08050042. (Separate Statement of Undisputed Material Facts #1  
 8 ("UFCL")). On February 12, 2006, Plaintiff's vehicle received a second citation at  
 9 the same parking lot, Citation Number 03251810. (UFCL # 2.) Both citations were  
 10 because of failure to display a valid permit and were issued pursuant to *California*  
 11 *Vehicle Code section 21113*. (UFCL # 3.) As of April 2012, neither of the two  
 12 citations has been paid. (UFCL #4.)

13             The parking lot where Plaintiff received the citations has at all relevant times  
 14 had a sign which informs everyone that violators are subject to citation pursuant to  
 15 21113. (UFCL # 5.) UCLA parking tickets are issued in accordance with the  
 16 *California Vehicle Code* and as well as UCLA Parking Regulations. UCLA is  
 17 authorized through *California Vehicle Code section 21113(a)* to establish parking  
 18 regulations. (UFCL # 6.) All citations are enforced by UCLA Parking  
 19 Enforcement. (UFCL # 7.) Violation of the *California Vehicle Code* will result in a  
 20 fine issued by UCLA Parking Enforcement. (UFCL # 8.) Both of Plaintiff's tickets  
 21 were issued because of the failure to display a permit, which is a violation of CVC  
 22 21113A6 and resulted in the imposition of a fine by UCLA. (UFCL #9.) Citations  
 23 issued by UCLA cannot be waived unless the violator establishes that the fine was  
 24 issued in error. (UFCL #10.)

25             All violators, including Plaintiff, have 21 days to contest the citation as  
 26 provided by *California Vehicle Code section 40215*. The violator has three levels  
 27 by which to appeal a ticket, (1) Level 1: Administrative Review; (2) Administrative  
 28 Hearing; and (3) Civil Review. (UFCL #11.) UCLA, pursuant to *California*

1 *Vehicle Code Section 40230(a)*, allows for the ability to file a Civil Appeal at the  
 2 municipal court if the violator is not successful pursuant to Level 1 and Level 2.  
 3 (UFCL #12.) The citations issued to Plaintiff were never appealed. (UFCL #13.)

4 In the present matter the citations were not assigned to Defendant for  
 5 collection on the delinquent account until May 11, 2009. (UFCL #14.) Defendant  
 6 has never provided UCLA with any parking signs. (UFCL #15.) UCLA is  
 7 responsible for all parking signs at UCLA parking lots. (UFCL #15.) Defendant has  
 8 never had any involvement in setting the amount of the citation. (UFCL #16.)

9 (a) **This Case Is Distinguishable From The Hansen**  
 10 **Decision**

11 In *Hansen v. Ticket Track*, 280 F.Supp 2d 1196, 1203-1204 (W.D. Wash.  
 12 2003) the only case of which Defendant is aware holding that some parking tickets  
 13 are debts within the FDCPA, the debt collector defendant argued that “it had an  
 14 implied contract with each of the members of the plaintiff class, and that such  
 15 contract included a clause for additional fees to be imposed in the event that a  
 16 customer failed to pay the required parking fee.” *Hansen* at 1201. The Court in  
 17 *Hansen* held that “Defendant cannot have it both ways. On the one hand, defendant  
 18 argues that there is an implied contract that its customers have breached by failing to  
 19 pay the appropriate fees. On the other hand, defendant argues that no “debt” is  
 20 created within the meaning of the act because the customers are stealing services.  
 21 *Hansen* at 1201

22 In the present matter, Defendant and/or UCLA have never argued that  
 23 Plaintiff’s fine was somehow the result of an implied contract. Plaintiff’s ticket was  
 24 a fine, authorized by the *California Vehicle Code*, for a parking violation. The fact  
 25 that this is a fine, not a contract, is further evidenced by the fact that, pursuant to  
 26 *California Vehicle Code Section 40230(a)*, Plaintiff had three levels by which to  
 27 appeal the ticket, including an appeal to the municipal court. This appeals process  
 28 applies to all UCLA parking tickets.

1 While the *Hansen* matter deals with a private parking company charging fees,  
 2 UCLA is a public University, which are authorized by the California Vehicle Code  
 3 to issue fines.

4 The parking sign in *Hansen*, which unlike here was provided by the debt  
 5 collector, informed violators that they “will be charged an additional \$50 violation  
 6 fee 24 hours a day collected by Ticket Track.” *Hansen* at 1198.

7 UCLA’s parking sign, which UCLA provides, included the following  
 8 statement:

9 VIOLATORS ARE SUBJECT TO CITATION - 21113(A)CVC

10 As such, there is no question that the ticket Defendant sought to collect upon  
 11 was a fine, authorized by the *California Vehicle Code*, and not the type of  
 12 contractual \$50 violation fee involved in *Hansen*. In addition, UCLA parking  
 13 citations are not waived unless the violator can establish that the ticket was  
 14 wrongfully issued. The fee in *Hansen* was waived if the customer later paid for the  
 15 parking. *Hansen* at 1198.

16 C. **Defendant’s Collection Letters Does Not Establish That Plaintiff’s**  
 17 **Parking Ticket Was a Consumer Debt**

18 Defendant expects Plaintiff to argue that Defendant’s collection letters  
 19 establish that this was indeed a consumer debt. However, as several Courts have  
 20 already held, this argument is simply absurd. First, Defendant’s letters specifically  
 21 states that the debt is a “PARKING CITATION.”

22 Second, the Fourth Circuit Court of Appeals in *Boosada v. Providence Dane,*  
 23 *LLC*. 2012 U.S. App. LEXIS 1828 at 8-9 (4<sup>th</sup>. Cir.) stated:

24 “The FDCPA defines consumer debt, not a debt collector’s  
 25 disclaimer. Moreover, if the use of the statutorily required  
 26 disclaimer is sufficient to establish an FDCPA claim, debt  
 27 collectors will be placed in a conundrum, exposed to  
 28 liability for both including the disclaimer and omitting it.  
*C.F. Lewis v. ACB Business Servs., Inc.*, 135 F.3d 389,  
 399-400 (6<sup>th</sup> Cir.1998) (“[t]o punish [debt collector] for  
 compliance with § 1692e(11) [by disclosing that it is an  
 ‘attempt to collect on a debt’ would be an absurd result

that we decline to reach.”); *Wade v. Regional Credit Ass’n*, 87 F.3d 1098, 100 (9<sup>th</sup> Cir. 1996) (Finding no FDCPA violation based on “informational” disclaimer and noting that the debt collector “would have violated the Act had it not included this statement). Put simply, a debt collector should not be penalized for taking the precaution of including the disclaimer within its initial written communication to the debtor, in the event the debt is subject to the FDCPA.”

As such, the FDCPA, not the conduct of the debt collector, establishes if the debt is subject to the FDCPA.

**D. If The Debt In The Current Matter is Held To Be A Debt pursuant to the FDCP, All Parking Tickets In California Would Be Debts Pursuant to the FDCPA**

Since the tickets issued in the present matter was authorized pursuant to the *California Vehicle Code*, a holding that the subject citation is a consumer debt would effectively establish that all parking tickets are debts in California. It is simply impossible to distinguish the ticket in the current matter, from any other parking tickets issued by cities, counties and municipalities. Since the Court in *Waters v. Howard Sommers Towing, Inc.*, 2011 U.S. Dist. LEXIS 41346 at \*20 (C.D. Cal. April 11, 2011) has already held that some parking tickets are not consumer debts, this Court should hold that the present ticket, which was issued pursuant to authority from the *California Vehicle Code*, is not a consumer debt.

**V. EVEN IF THE DEBT WAS A CONSUMER DEBT, WHICH IT IS NOT, DEFENDANT DID NOT VIOLATE THE FDCPA BECAUSE DEFENDANT NEVER RECEIVED PLAINTIFF’S ALLEGED DISPUTE LETTER**

Plaintiff’s entire complaint is based on the June 10, 2009, letter that Plaintiff allegedly sent to Defendant. However, Plaintiff has not provided any evidence that he sent the letter and Defendant never received a copy of the letter. Furthermore, Plaintiff never called Defendant regarding the letter or regarding any other matters.

///

1 Since Defendant did not know that the debt was disputed, Defendant did not violate  
 2 the FDCPA by failing to verify the debt, or by reporting the debt.

3 **A. Defendant Can Rebut The Mailbox Rule**

4 Under the common law mailbox rule, proper and timely mailing of a  
 5 document raises a rebuttable presumption that it is received by the addressee.  
 6 *Rosenthal v. Walker*, 111 U.S. 185, 193-941, 28 L. Ed. 395, 4 S. Ct. 382 (1884).  
 7 Even if Plaintiff could establish that he had sent the letter and this Court determines  
 8 that the common law mailbox rule applies, Defendant is able to rebut the  
 9 presumption under the mailbox rule as follows:

10 Defendant never received the dispute letter Plaintiff allegedly sent on June 10,  
 11 2009. (UFCL #18.) If Defendant would have received the dispute letter, Defendant  
 12 would have validated the debt and mailed a response back to Plaintiff. (UFCL #19.)

13 Defendant has a courier service provided by Specialized Messenger Service  
 14 who goes to the post office every day to pick up mail from the post office box  
 15 allegedly used by Plaintiff to send the dispute letter. (UFCL #20.) Defendant has  
 16 two persons each day assigned to sort through all the mail received for a particular  
 17 day. (UFCL #21.) Each person responsible for sorting the mail has been personally  
 18 trained by a supervisor. (UFCL #22.) The training involves new employees  
 19 actually going side by side with a supervisor until the supervisor is comfortable that  
 20 the person is capable of performing the task. (UFCL #23.) In addition, each person  
 21 is informed by the supervisor to ask the supervisor any questions they may have as  
 22 to the mail. (UFCL #24.) In the present matter, since Plaintiff's alleged letter is  
 23 clearly a dispute letter, had Defendant received the letter, it would have gone to the  
 24 correspondence file. (UFCL #25.) In addition, if a correspondence letter is  
 25 accidentally put in the payment pile, the letter is put back into the correspondence  
 26 pile when the employee processing payments discovers that there is no check.  
 27 (UFCL #26.)

28 ///

1 All dispute letters are then separated from the correspondence and put into a  
2 separate pile. Employees, who have been trained side by side with a supervisor,  
3 either drafts a response letter or enter a summary of the dispute letter online. (UFCL  
4 #27.) Unless UCLA informs Defendant not to pursue the debt, Defendant has a  
5 policy of sending a response letter each time it gets a dispute letter from a debtor.  
6 (UFCL #28.) If Defendant does not send a response, a summary of the dispute  
7 letter's content is put in Defendant's collection notes. (UFCL #29.) If Defendant  
8 would have received Plaintiff's letter, Defendant's collection notes would indicate  
9 that either a response was sent back to Plaintiff or, if a response was not sent, a  
10 summary of the content of the letter. (UFCL #30.) Since Defendant's collection  
11 notes have no information regarding Plaintiff's letter, Defendant did not receive the  
12 letter. (UFCL #31.) Furthermore, all employees are informed by their supervisor  
13 not to discard any correspondence related to the debt or dispute letters. All  
14 correspondence and dispute letters are stored for two years and then destroyed.  
15 (UFCL #32.) If mail that is sent to Defendant was not being received, or if it was  
16 being received and not handled properly, Defendant would expect to get complaints  
17 on the consumer phone numbers (listed on the mailed letters) or complaints from  
18 their customers, in this case UCLA, whom citizens could contact directly, neither of  
19 which was happening in 2009 or happening now. (UFCL #33.)

20 Since 1985, when Defendant opened its doors, it has never been sued for a  
21 violation of the FDCPA. (UFCL #34.) In addition, Defendant has never previously  
22 had a situation where a debtor claims that he/she sent a dispute letter which  
23 Defendant has no record of receiving. (UFCL #35.) In addition, Plaintiff never  
24 contacted Defendant regarding the dispute letter until the present suit was filed.  
25 (UFCL #36.)

26 Defendant, as evidenced by it never having been sued for an FDCPA  
27 violation in over 20 years, has procedures in place to make sure that mail it receives  
28 is properly dealt with.

1           B.     **Even If Defendant Cannot Rebut The Mailbox Rule, Defendant Is**  
 2                     **Protected By The Bonafide Error Defense**

3           “Section 813(c) of the Act, 15 U.S.C. § 1692k(c), provides that a debt  
 4 collector is not liable in an action brought under the Act if he can show “the  
 5 violation was not intentional and resulted from a bona fide error notwithstanding  
 6 the maintenance of procedures reasonably adapted to avoid any such error.” *Jerman*  
 7 *v. Carlisle, McNellie, Rini, Kramer & Ulrich LLP* 130 S. Ct 1605.

8           First, Since the dispute was never received by Defendant, any violation of the  
 9 FDCPA was clearly not intentional.

10          Second, as described above, Defendant had reasonable procedures in place to  
 11 avoid mail getting lost. The fact that Defendant’s procedures were reasonable is  
 12 confirmed by the fact that Defendant has never been sued for a violation of the  
 13 FDCPA.

14          C.     **Plaintiff’s FDCPA Claim Is Also Barred By The FDCPA’s One**  
 15                     **year Statute Of Limitations**

16          Even if the FDCPA does apply to the subject debt, which it clearly does not,  
 17 Plaintiff’s FDCPA claim is time barred. Plaintiff filed this action on July 12, 2011,  
 18 more than two years after he received the letters from Defendant and more than two  
 19 years after Plaintiff allegedly sent a letter disputing the debt to Plaintiff. All of  
 20 Plaintiff’s allegations stem from Defendants two letters and Plaintiff’s alleged letter.  
 21 Defendant reported the debt. Pursuant to 15 U.S.C. § 1692k(d), an action to enforce  
 22 any liability under the FDCPA may be brought within one year on the date of which  
 23 the violation occurs.

24          As this Court held in ruling upon Defendant’s demurrer to Plaintiff’s First  
 25 Amended Complaint:

26                     “The FAC makes clear that Plaintiff knew of Defendant’s  
 27                     alleged FDCPA violations in June 2009 (FAC ¶¶ 10-14.)  
 28                     And even if Plaintiff never obtained a credit report,  
                       Defendant’s June 3, 2009 letter put Plaintiff on notice that

1 failure to resolve the obligation would result in almost  
2 immediate referral to at least once credit rating agency."

3 (Order on Motion for Judgment on the Pleadings.)

4 Plaintiff's Second Amended Complaint attempts avoid the Court's ruling that  
5 Plaintiff knew about FDCPA violations in June 2009 by leaving out the facts  
6 regarding the letter violating the FDCPA. However: "A pleader may not attempt to  
7 breathe life into a complaint by omitting relevant facts which made his previous  
8 complaint defective." *Hills Trans. Co. v. Southwest* (1968) 266 Cal.App.2d 702,  
9 713 [72 Cal.Rptr. 441]. Moreover, any inconsistencies with prior pleadings must be  
10 explained; if the pleader fails to do so, the court may disregard the inconsistent  
11 allegations. *Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212  
12 Cal.App.3d 1383, 1390 [261 Cal.Rptr. 240].

13 In addition, this Court's ruling that Defendant's June 3, 2009, letter put  
14 Plaintiff on notice that Defendant would report the debt unless it was resolved is still  
15 applicable to the SAC.

16 Accordingly, Plaintiff's FDCPA claim is barred by the statute of limitations.

17 **V. CONCLUSION**

18 For the reasons set forth herein, and in the moving papers, Defendant requests  
19 that this Court grant the instant motion and enter judgment in its favor against the  
20 Plaintiff.

21 DATED: April 25, 2012

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23  
24 By: /s/ Patrik Johansson

25 Patrik Johansson  
26 Attorneys for Defendant, TURBO DATA  
27 SYSTEMS, INC.  
28

**FEDERAL COURT PROOF OF SERVICE**

Norris v. Turbo Data - File No. 31978.02

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, CA 90012. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On April 25, 2012, I served the following document(s): **DEFENDANT TURBO DATA SYSTEMS, INC.'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Douglas F. Galanter, Esq.  
Thomas c. Seabaugh, Esq.  
NORRIS & GALANTER LLP  
555 West Fifth Street, 31st Street  
Los Angeles, California 90013  
Tel: (213) 996-8439  
Fax: (213) 996-8475  
Email: tseabaugh@norzallaw.com

The documents were served by the following means:

☒ (BY PERSONAL SERVICE) I personally delivered the documents to the persons at the addresses listed above. Delivery was made ☒ to the party or attorney listed above, or ☐ at the party or attorney's office by leaving the documents in an envelope or package clearly labeled to identify the party or attorney being served with a receptionist or individual apparently in charge of the office, or ☐ at the time of delivery, there appeared to be no one in charge, and the envelope or package clearly labeled to identify the party or attorney being served was left in a conspicuous place.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2012, at Los Angeles, California.

  
ROSA E. ROJAS